STATE OF MICHIGAN

COURT OF APPEALS

KATHLEEN MARY BETTERS, Plaintiff-Appellee,	UNPUBLISHED February 11, 2000
v	Nos. 211529; 212057 Menominee Circuit Court
LARRY WALTER BETTERS, Defendant-Appellant.	LC No. 93-007071-DM

Before: Griffin, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Defendant appeals by leave granted in these consolidated cases, challenging the denial of his request for a reduction in child support, the grant of an injunction restraining him from gambling, and the suspension of his driver's license for failure to pay child support. We affirm.

First, defendant argues that the trial court erred in imputing income when his only actual income was Supplemental Security Income (SSI). We disagree.

The Friend of the Court Bureau (FOC) has published the Michigan Child Support Formula Manual pursuant to legislative mandate. *Ghidotti v Barber*, 459 Mich 189, 196; 586 NW2d 883 (1998). According to the manual, means tested sources of income such as SSI should not be considered as income to either parent for the purpose of determining child support. Michigan Child Support Formula Manual, tenth rev, 1998, 6. Moreover, with regard to imputation of income, the manual states:

> Imputation [of income] is *not* appropriate where:
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> 1. A payee/payer source of income is a means tested income such as Temporary Assistance to Needy Families (TANF), . . . Supplemental Security Income (SSI), etc. [*Id.* at 8 (emphasis in original).]

A court must order support in an amount determined by application of the child support formula developed by the FOC. *Ghidotti*, *supra* at 196. See also MCL 722.717(3); MSA 25.497(3). The

Court in *Ghidotti, supra* at 198, reviewed the principle of imputing income to determine a child support obligation:

> According to the applicable statutes, the child support formula "shall be based upon the needs of the child and the actual resources of each parent." MCL 552.519(3)(a)(vi); MSA 25.176(19)(3)(a)(vi). In applying this mandate, cases have broadened the limits of "actual resources" to include certain payers' unexercised ability to pay. See, e.g., *Rohloff v Rohloff*, 161 Mich App 766; 411 NW2d 484 (1987) (a trial court may order child support where a party voluntarily reduces income and the trial court concludes the party has the ability to earn an income); *Heilman v Heilman*, 95 Mich App 728; 291 NW2d 183 (1980) (a trial court may properly take into consideration a parent's ability to work and earn money in setting the appropriate child support award). However, in allowing income imputation to a payer whom the court finds to have an unexercised ability to pay, this Court has required specific findings by the trial court. *Sword v Sword*, [399 Mich 367; 249 NW2d 88 (1976)] (in determining a parent's ability to pay child support, the court must evaluate a number of factors, such as employment history, education and skills, available work opportunities, diligence in trying to find work, the defendant's personal history, assets, health and physical ability, and availability for work); *Rohloff, supra* (refers to *Sword* criteria for determination of ability to pay child support in voluntary reduction of income case).
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> The requirement that the trial court evaluate criteria such as those listed in *Sword* is essential to ensure that any imputation of income is based on an actual ability and likelihood of earning the imputed income. Any other rule would be pure speculation and a clear violation of the requirement that child support be based upon the actual resources of the parents. MCL 552.519(3)(a)(vi); MSA 25.176(19)(3)(a)(vi). Moreover, the manual requires that the decision to impute income be based on the evaluation of "among other equitable factors," the following eight factors:
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> 1. Prior employment experience;
> 2. Education level;
> 3. Physical and mental disabilities;
> 4. The presence of children of the marriage in the party's home and its impact on the earnings of the parties;
> 5. Availability of employment in the local geographical area;
> 6. The prevailing wage rates in the local geographical area;
> 7. Special skills and training; or

8. Whether there is any evidence that the party in question is able to earn the imputed income. [Manual at 8.]

Further, 42 USC 407(a) provides that "none of the moneys paid or payable . . . under [subchapter II] shall be subject to execution, levy, attachment, garnishment, or other legal process . . . ." 42 USC 1383(d)(1) extends 407(a)'s protection to SSI benefits. See *Becker Co Human Services v Peppel*, 493 NW2d 573, 575 (Minn App, 1992). 42 USC 407(a) and 1383(d)(1), and the child support manual, as they must be read together, prohibit the imputation of income to a parent receiving means tested income unless the trial court

> determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record the following:
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> (a) The support amount determined by application of the child support formula.
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> (b) How the support order deviates from the child support formula.
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> (c) The value of property or other support awarded instead of payment of child support, if applicable.
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> (d) The reasons why application of the child support formula would be unjust or inappropriate in the case. [*Ghidotti, supra* at 196, quoting MCL 722.717(3); MSA 25.497(3).]

In the present case, the trial court made findings that because defendant spent several hours per week at the casino and helped his mother with jobs around the house, defendant was capable and likely to be able to earn at least $20 per week to pay his child support obligation. While these findings are not extensive, they are adequate to support the nominal obligation imposed by the trial court. That is, perhaps more extensive findings would be necessary to support the imputation of income equal to a full-time job and the resulting child support obligation. However, the trial court merely found that defendant had the means of providing nominal child support in the amount of $20 per week. The trial court's findings adequately support that nominal obligation.

Furthermore, the fact that defendant has been deemed disabled for the purpose of receiving SSI benefits is not dispositive in this case. SSI benefits are to assist those who cannot work because of age, blindness or disability by setting "a Federal guaranteed minimum income level for aged, blind and disabled persons." *Schweiker v Wilson,* 450 US 221, 223; 101 S Ct 1074; 67 L Ed 2d 186 (1981). We conclude, however, that being "disabled" for the purpose of receiving SSI benefits does not mean that a person is unable to earn *any* income, only that he is unable to meet the federal government's "minimum income level."

Defendant next argues that because his only actual income was SSI benefits, the actions taken by the trial court to "encourage" defendant to pay his child support obligations amounted to "legal process" in violation of federal and state law. We disagree.

The antialienation provisions of 42 USC 407(a) and 1383(d) impose a broad bar against the use of any legal process to reach SSI benefits. *Johnson v Wing*, 12 F Supp 2d 311, 315 (SD NY, 1998), citing *Philpott v Essex Co Welfare Bd*, 409 US 413, 417; 93 S Ct 590; 34 L Ed 2d 608 (1973). Congress intended the words "or other legal process" to embrace not only the use of formal legal machinery, but also the use of express or implied threats of sanctions. *Johnson, supra* at 316. The present case is one in which defendant's only actual income (SSI) was not subject to any legal process. 42 USC 407(a) and 1383(d)(1). However, we conclude that, because the trial court properly determined that defendant is capable of paying child support from income *other than* his SSI benefits, there is no alienation by legal process of his SSI benefits. *Ghidotti, supra.*

Defendant also contends that the trial court's injunction preventing him from gambling or entering a place of gambling is an improper restriction. We disagree. As this Court stated in *Schaeffer v Schaeffer*, 106 Mich App 452, 457-458; 308 NW2d 226 (1981):

> A court possesses inherent authority to enforce its own directives. A divorce case is equitable in nature, and a court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy. Moreover, MCL 600.611; MSA 27A.611 provides:
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> > "Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments." [Footnotes omitted.]

The trial court's inherent authority includes the ability to grant injunctive relief. See *Jeffery v Lathrup*, 363 Mich 15; 108 NW2d 827 (1961); *Impact Promotions, Inc v Dep't of Treasury*, 104 Mich App 520; 305 NW2d 253 (1981); Const 1963, art VI, § 13; MCL 600.601; MSA 27A.601. Under the unique facts of this case, we conclude that the court's injunction was proper. Defendant claims to be totally and permanently disabled from working, but admits to spending on an average twelve hours per week gambling at casinos. In response to a bench warrant, defendant posted bond which included $250 in casino chips. Defendant has been found in contempt for failing to support his children as ordered by the Menominee Family Court. It appears from the record that defendant's gambling is impeding defendant's ability to comply with the court ordered child support which is necessary for his children.

Orders of contempt are matters for the sound discretion of the trial court. *Deal v Deal*, 197 Mich App 739, 374; 496 NW2d 403 (1993), MCL 552.633; MSA 25.164(33). *Wells v Wells*, 144 Mich App 722, 732; 375 NW2d 800 (1985). "The circumstances of every case will require different inquiries." *Id.* After careful consideration of the facts of the case and the background of defendant, we hold that the trial court did not abuse its discretion by enjoining defendant from engaging in the detrimental activity of gambling or frequenting gambling establishments.

Defendant argues that the trial court erred in suspending his driver's license for failure to pay child support. Defendant failed to properly preserve his argument and therefore has waived appellate

review of this issue absent manifest. *Townsend v Brown Corp of Ionia, Inc,* 206 Mich App 257, 263; 521 NW2d 16 (1994). Because any deficiencies in the notice to defendant could have been properly addressed in the trial court had defendant raised the issue in a timely manner, we are not persuaded that manifest injustice will result from our failure to address. In short, we will not allow defendant to sit back and harbor error.

Affirmed.

/s/ Richard Allen Griffin
/s/ Michael R. Smolenski